

APPEAL NO. 021230  
FILED JULY 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 18, 2002, the hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not include injury to the right shoulder and that she does not have disability. The claimant has appealed these determinations on evidentiary sufficiency grounds. The respondent (carrier) asserts in response that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed as reformed.

We note at the outset that the hearing officer's Decision and Order reflects that five claimant's exhibits were admitted. However, two of the exhibits are numbered as exhibit "2." We reform the Decision and Order to renumber the claimant's exhibits as "1" through "5."

The carrier stated that it accepted a sprain/strain injury to the claimant's cervical and thoracic spinal regions and to her left shoulder but disputes an injury to the right shoulder. The claimant testified that she received her injuries while changing a saw blade on the machine she was operating at work on \_\_\_\_\_, and that when she received her first medical treatment on March 27, 2001, from Dr. W at the (clinic), she confused her right shoulder with her left shoulder and erroneously gave a history of left shoulder injury when, in fact, it was her right shoulder that was injured. The carrier contended that the claimant received treatment for the left shoulder and that the medical records do not reflect a complaint of right shoulder injury until May 10, 2001.

The claimant had the burden to prove that she sustained the claimed left shoulder injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ.

App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer, as reformed, are affirmed.

The true corporate name of the insurance carrier is **VIRGINIA SURETY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Manager/Judge